

GUIDANCE

To: All
From: Jeffrey Hartman, Attorney Advisor Re:
Guidance on Fifth Circuit Law
Date: March 15, 2017

I. Summary

This packet contains several cases that reflect Fifth Circuit interpretations of notice and corroboration in asylum proceedings. The relevant text related to the application of the REAL ID Act to corroboration in the Fifth Circuit is highlighted.

The seminal Fifth Circuit case on corroboration concludes that under 8 C.F.R. § 1208.13(a), “applicants are eligible for asylum based solely on credible testimony *only if corroborating evidence is not reasonably available.*” *Rui Yang v. Holder*, 664 F.3d 580, 586 (5th Cir. 2011) (emphasis supplied). This differs markedly from the standard in the Ninth Circuit. *Id.* at 585. The best practice for Immigration Judges detailed to the Fifth Circuit when corroboration is at issue is to:

1. **Articulate** that corroborative evidence is required
2. **Identify** what type of evidence is required (e.g., medical records, letters, etc.)
3. **Explain** the respondent’s efforts to provide corroborative evidence, if any
4. **Discuss** why corroborative evidence is *reasonably available*
5. **Conclude** that the respondent failed to meet his or her burden because of the lack of corroborative evidence

*** Where possible, it is advisable to grant a continuance to allow the respondent to obtain corroborative evidence. However, the Fifth Circuit has indicated—in unpublished decisions—that the text of the Real ID Act may be sufficient to put the respondent on notice that reasonably available corroborative evidence is required. Cf. *Rui Yang v. Holder*, 664 F.3d 580, 588 (5th Cir. 2011) (“To the extent that Yang argues that he would have obtained the required evidence if the IJ had granted him more time, he effectively contends that the IJ abused his discretion by failing to grant Yang a continuance to obtain more evidence.”).